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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)**

ANTHONY ELSASS, ET AL.	:	CASE NO: C-1-00-0100
	:	(Judge Spiegel)
Plaintiffs	:	
vs.	:	
GENERAL ACCIDENT INSURANCE COMPANY, ET AL.	:	
Defendants	:	

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT ON BEHALF OF ZURICH
AMERICAN INSURANCE COMPANY**

The Defendant, Zurich American Insurance Company (hereinafter Zurich), hereby files this Notice of Supplemental Authority in support of its Motion for Summary Judgment in this matter.

On November 5, 2003, the Ohio Supreme Court announced its decision in Westfield Insurance Company v. Galatis, 100 Ohio St.3d, 2003–Ohio–5849, 2003 Ohio LEXIS 3291. In that decision, the Ohio Supreme Court limited Scott-Pontzer UIM coverage under an employer’s commercial automobile liability policy only to loss sustained by employees within the course and scope of their employment. More importantly for this case, the decision in Westfield Insurance Company v. Galatis, *supra*, overruled the decision in Ezawa v. Yasuda Fire and Marine Insurance

Company of America, (1999), 86 Ohio St.3d 557, 715 N.E.2d 1142. That case had held that family members of an employee were entitled to Scott-Pontzer UIM coverage.

In this case, Anthony Elsass has asserted a claim against Zurich American Insurance Company under the commercial automobile liability policy issued by Zurich to his wife's employer. The accident that gives rise to this lawsuit occurred when Mr. Elsass was operating his own motor vehicle and was struck by another motorist who is allegedly under insured. He is asserting covering under his wife's policy and clearly was acting on his own behalf and had no employment arrangement or agreement with Zurich American's insured.

Under the decision in Westfield Insurance Company v. Galatis, *supra*, the Plaintiffs have no basis to continue to assert or claim coverage under the Zurich policy involved in this action.

Respectfully submitted,

s/Gary J. Sergeant per electronic filing
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CERTIFICATION

I hereby certify that I have, this 15th day of December, mailed (either electronically or conventionally) a copy of the foregoing pleading to the following attorneys of record:

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s/ Gary J. Sergent per electronic filing

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